

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Ruby Metals, Inc.

1) 2805 S. Industrial Drive
Bloomington, California 92316
ID. No: CAL000263358

2) 2820 S. Industrial Drive
Bloomington, California 92316
ID. No: CAC002609409

3) 2700 S. Security Avenue
Colton, California 92324
ID. No: CAL000304056

Respondent.

Docket HWCA 2005-1007

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Ruby Metals, Inc. (Respondent), a California corporation, enter into this Consent Order and agree as follows:

1. Respondent generates, handles, treats, stores, and/or disposes hazardous waste at 2805 S. Industrial Drive, Bloomington, California, 2820 S. Industrial Drive, Bloomington, California and 2700 Security Avenue, Colton, California (Sites).

2. The Department inspected the Sites on November 7-8, 2005 and March 1-2, 2006.

3. The Department alleges the following violations:

3.1. Respondent violated Health and Safety Code section 25201(a) in that on or about November 8, 2005, Respondent stored and/or disposed of hazardous waste without authorization from the Department in that cathode ray tube (CRT) glass, CRTs, CRT devices, electronic devices, electronic components, batteries,

circuit boards and other hazardous wastes were observed to have been left outside in open containers and piles on the 2700 Security Avenue site potentially since 2000 when Ruby Computer Recovery Inc. ceased operating as a computer recycler.

3.2. Respondent violated California Code of Regulations, title 22, section 66273.31(a) in that on or about November 7-8, 2005, Respondent disposed of universal waste batteries to the ground at the 2805 S. Industrial Drive site.

3.3. Respondent violated California Code of Regulations, title 22, section 66273.31(b) and section 66273.81(b) in that on or about November 7-8, 2005, Respondent diluted or treated universal waste electronic devices (UWEDs) and CRT materials by allowing them to be mixed with other scrap material at 2820 Industrial Drive.

3.4. Respondent violated California Code of Regulations, title 22, section 66273.33(d)(1)(A)&(B) and section 66273.83(a)(1)&(2) in that on or about November 7-8, 2005, Respondent failed to handle or store UWEDs in a manner that minimizes breakage and package or contain CRT materials to prevent breakage and failed to contain broken UWEDs and CRT materials and releases from UWEDs and CRT materials at the 2820 S. Industrial Drive site.

3.5. Respondent violated California Code of Regulations, title 22, section 66273.37 and section 66273.87 in that on or about November 7-8, 2005, and March 1, 2006, Respondent failed to contain, characterize or repackage releases of UWEDs, universal waste batteries and CRT materials and residues of UWEDs and CRT materials or damaged UWEDs and CRT materials at the 2820 S. Industrial Drive and 2700 Security Avenue sites.

3.6. Respondent violated California Code of Regulations, title 22, section 66273.33(d)(2)(A) and section 66273.82(a) in that on or about November 7-8, 2005, Respondent failed to notify the Department at least 30 days prior to accepting any UWEDs and CRT materials from an offsite source at the 2805 and 2820 S. Industrial Drive sites.

3.7. Respondent violated California Code of Regulations, title 22, section

66273.40(d) and section 66273.90(a) in that on or about November 7-8, 2005, Respondent failed to notify the Department and the CUPA four weeks before shipping UWEDs and CRT materials to a foreign destination.

3.8. Respondent violated Public Resources Code section 42476.5(a) in that on or about November 7-8, 2005, Respondent failed to notify the Department at least 60 days prior to exporting covered electronic devices intended for recycling or disposal to a foreign country.

3.9. Respondent violated California Code of Regulations, title 22, section 66273.33(d)(2)(B) and section 66273.82(b)(2) in that on or about November 7-8, 2005, and March 1, 2006, Respondent failed to submit annual reports to the Department for UWEDs and CRT materials accepted from offsite sources in 2004 and 2005.

3.10. Respondent violated California Code of Regulations, title 22, section 66273.36 and section 66273.86 in that on or about November 7-8, 2005, Respondent failed to train employees who handle or have responsibility for managing UWEDs and CRT materials of the proper handling and emergency procedures.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent admits the violations described above.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1.1. Respondent has partially corrected the violation referenced in Section 3.1. by removing the waste identified at the 2700 Security Avenue site and

providing documentation of that removal to the Department. Respondent shall conduct soil sampling in the dirt border surrounding the concrete pad to determine if soil contamination is present at this location. Respondent shall provide a sampling report that contains the results of the soil testing to the Department within 60 days after conducting the soil sampling. If soil contamination is present, Respondent shall conduct additional sampling to determine the vertical and lateral extent.

10.1.2. Respondent has corrected the violation referenced in Section 3.2.

10.1.3. Respondent has indicated it will not accept electronic wastes at any of the Sites. Respondent shall immediately properly contain and remove of all remaining universal waste electronic devices and CRT materials and any residuals from electronic devices and CRT materials that are regulated by the Department. Respondent shall provided documentation to the Department that the removal has been completed.

10.1.4. Respondent shall immediately identify and manage any universal wastes received by the facility in accordance with the California Code of Regulations, title 22, chapter 23. Respondent shall submit documentation of the proper packaging and labeling of the universal waste batteries and lamps observed at the 2820 S. Industrial Drive site during the March 2006 inspection and indicate what the facility plans to do with universal waste lamps and batteries received. Respondent shall immediately segregate universal waste from other scrap material received at the sites.

10.1.5. Respondent has ceased accepting UWEDs and CRT materials from off-site sources. Respondent shall not accept UWEDs or CRT materials from off-site sources at any of the Sites without proper notification to the Department.

10.1.6. Respondent has indicated it has ceased exporting UWEDs, CRT materials and covered electronic devices. Respondent shall not send UWEDs, CRT materials or covered electronic devices to a foreign destination without submitting the proper notifications to the Department. Respondent shall immediately submit information required in California Code of Regulations, title 22,

section 66273.40(e) and section 66273.90(b) and Public Resources Code section 42476.5(a) for UWEDs, CRT materials and covered electronic devices exported during 2005.

10.1.7. Respondent shall immediately submit an annual report of UWED and CRT material handling activities for 2005.

10.1.8. Respondent has corrected the violation referenced in Section 3.10.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Ms. Pamela LePen
Department of Toxic Substances Control
Statewide Compliance Division
5796 Corporate Avenue
Cypress, California 90630

and

Mr. Peter Saavedra
San Bernardino County Fire Department
Office of the Fire Marshall
Hazardous Materials Division
620 South E. Street
San Bernardino, California 92415-0153

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must

submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the sites or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Sites shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Sites at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Sites; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all

records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the

Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Respondent shall pay the Department a total sum of \$50,000 of which \$15,440 is reimbursement of the Department's costs, \$7,390 is for a supplemental environmental project (SEP) and \$27,170 is a penalty.

11.1. The penalty shall be reduced by \$5,000 if and only if , Respondent sends at least one employee to the California Compliance School, Modules I-IV, and submits to the Department, within 180 days of the effective date of this Consent Order, a Certificate of Satisfactory Completion thereof.

11.2. In the event that the above Certificate of Satisfactory Completion is not received by the Department within 180 days of the effective date of this Consent Order, the entire remaining balance of \$5,000 shall then become due and payable.

11.3. The \$45,000 shall be payable in four installments. The first installment of \$7,390 for the SEP shall be due within 30 days of the effective date of this Consent Order. The second installment of \$10,870 shall be due within 60 days of the effective date of this Consent Order. The third installment of \$15,870 shall be due within 90 days of the effective date of this Consent Order. The fourth installment of \$10,870 will be due within 120 days of the effective date of this Consent Order.

11.4. Respondent's check for the \$7,390 for the SEP shall be made payable to the Environmental Enforcement and Training Account. All other checks shall be made payable to the Department of Toxic Substances Control. All checks shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor

P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the checks shall be sent:

To: Ms. Pamela LePen
Department of Toxic Substances Control
Statewide Compliance Division
5796 Corporate Avenue
Cypress, California 90630

To: Mr. Charles Stone
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon

the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: 03/01/07 Original Signed by Brian Chen
Mr. Brian Chen, Manager
Ruby Metals, Inc.

Dated: 03/08/07 Original Signed by Yvonne Sanchez
Ms. Yvonne M. Sanchez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control